

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

**UNITED STATES OF AMERICA**

v.

**MICHAEL LEE LAMPKINS,**

Defendant.

)  
)  
) Case No. 1:04CR00015  
)

**ORDER**

)  
)  
) By: James P. Jones  
) Chief United States District Judge  
)

The defendant was sentenced by this court on August 20, 2004, to 78 months imprisonment. The government has now filed a motion for reduction of his sentence pursuant to Federal Rule of Criminal Procedure 35(b). However, the docket indicates that the defendant filed a timely notice of appeal and his appeal is still pending. Once a notice of appeal is filed, this court lacks jurisdiction to rule on a Rule 35(b) motion. *United States v. Sturkey*, 88 Fed. Appx. 575, 576 (4th Cir. 2004) (unpublished).

I am inclined to grant the government's motion and resentence the defendant, but unless the appeal is concluded or the parties request and obtain an order of the court of appeals remanding the case for resentencing, I have no power to resentence the defendant. *See United States v. Bingham*, 10 F.3d 404, 404 (7th Cir. 1993) (adopting procedure for remand for consideration of Rule 35(b) motions).

Accordingly, it is **ORDERED** that the Motion to Reduce Sentence is held in abeyance.

ENTER: October 6, 2005

/s/ JAMES P. JONES  
Chief United States District Judge